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8 *Attorneys for Defendant Transworld Systems Inc.*

9  
10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 OSKAR LIZARRAGA-DAVIS, ) Case No. 5:18-cv-04081-BLF  
13 )  
14 Plaintiff, ) DECLARATION OF DEBBIE P.  
15 ) KIRKPATRICK IN SUPPORT OF  
16 vs. ) DEFENDANT TRANSWORLD  
17 TRANSWORLD SYSTEMS INC., ) SYSTEMS INC.'S REPLY TO  
18 Defendant. ) PLAINTIFF'S OPPOSITION TO  
19 ) MOTION FOR SUMMARY  
20 ) JUDGMENT  
21 )  
22 ) Judge Beth Labson Freeman  
23 )  
24 ) Date: May 5, 2022  
25 ) Time: 9:00 a.m.  
26 ) Courtroom: 3, 5<sup>th</sup> Floor

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27 I, Debbie P. Kirkpatrick, hereby declare:

28 1. I am an attorney at law licensed to practice before all courts of the State  
of California, admitted to the United States District Court, Northern District of  
California, and an attorney of record in this action for Transworld Systems, Inc.

1 (“TSI”). All facts stated in the declaration are true based on my own knowledge. If  
2 called as a witness, I could testify competently to the matters set forth herein.  
3

4 2. A true and correct copy of the certified transcript of the Deposition of  
5 Bradley Luke is attached hereto as Exhibit 1.  
6

7 I declare under penalty of perjury that the foregoing is true and correct.  
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9 Executed this 14<sup>th</sup> day of April, 2022 at San Diego, California.  
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10 /s/*Debbie P. Kirkpatrick*  
Debbie P. Kirkpatrick

# EXHIBIT 1

16 DATE: Tuesday, March 30, 2021  
17 TIME: 8:59 a.m. - 1:59 p.m.  
18 WITNESS LOCATION: Peachtree Corners, Georgia  
19 REPORTED BY: Sarah Jean MacDevitt, CSR, RPR  
California CSR 14175

1 VIRTUAL APPEARANCES

2 FOR THE PLAINTIFF:

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4 BY: ERIKA HEATH, Attorney at Law  
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5 San Francisco, California 94104  
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6 FOR THE DEFENDANT AND THE WITNESS:

7 SESSIONS ISRAEL & SHARTLE  
8 BY: JAMES K. SCHULTZ, Attorney at Law  
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9 San Diego, California 92108  
(619) 296-2018  
10 jschultz@sessions.legal

11 ALSO PRESENT:

12 CYDNEY AGNO - Court Reporting Intern

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1	INDEX OF EXAMINATIONS		
2	EXAMINATION BY:	PAGE	
3	MS. HEATH.....	6	
4			
5			
6	---	00---	
7			
8	INDEX OF EXHIBITS		
9	NUMBER	DESCRIPTION	PAGE
10	Exhibit 1	Plaintiff's Notice of	20
11		Deposition of Defendant	
12		Transworld Systems, Inc.	
13		Pursuant to Fed. R. Civ. P.	
14		30(b)(6); 4 pages	
15			
16	Exhibit 2	November 3, 2014, letter from	24
17		U.S. Bank National Association	
18		to Whom it May Concern; TSI0026	
19			
20	Exhibit 3	March 10, 2017, Loan Payment	65
21		History Report; 2 pages	
22			
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1	INDEX OF EXHIBITS (CONTINUED)		
2	NUMBER	DESCRIPTION	PAGE
3	Exhibit 4	June 2006 Cosigned Loan	68
4		Request/Credit Agreement -	
5		Signature Page; 5 pages	
6			
7	Exhibit 5	Note Disclosure Statement;	81
8		1 page	
9			
10	Exhibit 6	2006-4 Pool Supplement GMAC	82
11		Bank; 6 page	
12			
13	Exhibit 7	Deposit and Sale Agreement The	94
14		National Collegiate Student	
15		Loan Trust 2006-4; 11 pages	
16			
17	Exhibit 8	September 14, 2016, Loan	100
18		Financial Activity; 12 pages	
19			
20	Exhibit 9	Excerpt of TSI's Internal	107
21		Account Notes; 17 pages	
22		CONFIDENTIAL	
23			
24			
25			

1	INDEX OF EXHIBITS (CONTINUED)		
2	NUMBER	DESCRIPTION	PAGE
3	Exhibit 10	Consent Order In the Matter of	125
4		Transworld Systems, Inc.;	
5		32 pages	
6			
7	Exhibit 11	Defendant Transworld Systems,	133
8		Inc.'s Declaration in Support	
9		of Motion for Summary Judgment;	
10		6 pages	

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1 PROCEEDINGS

2 ---oo---

3 BRADLEY LUKE,

4 having been duly sworn by the Certified  
5 Shorthand Reporter to tell the truth, the  
6 whole truth, and nothing but the truth,

7 testified as follows:

8 ---oo---

9 EXAMINATION

10 BY MS. HEATH:

11 Q. So good morning. Could you please start by  
12 stating your full name.

13 A. It is Bradley Luke, B-r-a-d-l-e-y L-u-k-e.

14 Q. Great. Thank you.

15 So I should start by explaining that you are  
16 under oath today, and although we are in this informal  
17 Zoom setting, the oath that you have taken does have the  
18 same force and effect as if you were testifying in a  
19 court of law.

20 Do you understand that?

21 A. Yes, ma'am. I understand.

22 Q. Okay. Great.

23 And, for the record, what is your address?

24 A. My address currently is 2 Sun Court, Suite 215,  
25 and that's in Peachtree Corners, Georgia.

1 BY MS. HEATH:

2 Q. So can you identify this document?

3 A. Yes, ma'am. This is the loan request credit  
4 agreement. And it has the terms and conditions and  
5 cosigner notice attached to it.

6 Q. Okay. And I see that the lender is indicated  
7 as GMAC Bank, as you indicated earlier. My question is,  
8 by looking at this document, can you tell who  
9 Mr. Lizarraga-Davis was interacting with to get this  
10 loan? For example, was it the bank or was it the school  
11 or . . .

12 MR. SCHLUTZ: Object to the form.

13 THE WITNESS: So these loan programs were  
14 through the bank or a loan processor on the bank's  
15 behalf. So in certain instances they hire a third party  
16 to help originate these loans on the bank's behalf.

17 BY MS. HEATH:

18 Q. I'm going to do another screen share on this  
19 one.

20 A. Okay.

21 Q. And I'm going to scroll down here to the  
22 signature line. And right above the signature line,  
23 there's this fax number.

24 Do you see that?

25 A. Yes, ma'am. I do.

1           **Q. Do you know whose fax number that is?**

2           A. Not with certainty.

3           **Q. And it looks like, actually, there is indeed a**  
4           **fax header at the top that says "Page 2 of 2."**

5           **Do you see that?**

6           MR. SCHLUTZ: Object to the form.

7           THE WITNESS: Yes, ma'am. I see that.

8           BY MS. HEATH:

9           **Q. Actually, I -- to be clear, I think I referred**  
10          **to it as a fax header. Let me ask you, do you know what**  
11          **that "Page 2 of 2" refers to?**

12          A. Yes, ma'am. I do.

13          **Q. And what is that?**

14          A. That's actually part of AES's just -- they put  
15          that on certain documents when they are indexing them.

16          So it is not actually a fax header. It was something  
17          that was put on after, afterwards, after it was signed.

18          **Q. After it was signed?**

19          A. Yes, ma'am.

20          **Q. Where is page 1 of 2?**

21          MR. SCHLUTZ: Object to the form.

22          BY MS. HEATH:

23          **Q. If you know?**

24          A. I don't -- well, it is with AES. I don't know  
25          specifically what it is. I may have it. This case has

1 been going on for a little while. But basically it  
2 is -- there's a packet of information called the loan  
3 origination packet that includes this document, the note  
4 disclosure statements, amongst other documents. Page 1  
5 of 2 would be within that packet that is generally held  
6 by AES unless TSI needs to request it for any reason.

7 Q. So we spoke about the process a little bit more  
8 broadly earlier, but when would AES -- I'm sorry. When  
9 would TSI have gotten this particular document?

10 A. On or about March of 2015. So most likely it  
11 was sometime in February of 2015 they would have  
12 received a copy of this document.

13 Q. Okay. And this document would have been a PDF  
14 sent through the file transfer?

15 A. Yes, ma'am. And to clarify a little bit, it  
16 wouldn't be this document in totality, it would be the  
17 first page of this document along with the note  
18 disclosure statement, which was your PDF letter E. They  
19 would receive those two documents in PDF format.

20 Q. And you said just this -- you said just this  
21 first page is received?

22 A. Yes, ma'am. That's correct.

23 Q. So where do the remaining pages come from?

24 A. So those come from -- we have a library of  
25 various terms and conditions that go along with each

1                   And if the court reporter could label this PDF  
2    as Exhibit 5.

3                   (DEPOSITION EXHIBIT 5 WAS MARKED.)

4    BY MS. HEATH:

5                   Q. And, Mr. Luke, can you identify this document?

6                   A. Yes, ma'am. It is a note disclosure statement  
7    that was issued upon the approval and disbursement of  
8    Mr. Lizarraga-Davis's loan, particularly the loan that  
9    is evidenced by the credit agreement we just discussed  
10   as deposition Exhibit 4.

11                  Q. And I know we may have discussed this document  
12   earlier, but now that we have it in front of us, for a  
13   clear record, where does TSI get this document?

14                  A. Similar to the credit agreement, the signature  
15   page of the credit agreement, we got it at the same time  
16   from AES.

17                  Q. And then this is saved on the repository; is  
18   that right?

19                  A. Yes, ma'am.

20                  Q. Now, you will notice at the top there's sort of  
21   a similar header as to what we saw earlier that says  
22   "Page 3 of 18."

23                  Do you see that?

24                  A. Yes, ma'am. I do.

25                  Q. What is that?

1                   A. Similar to with the signature page of the  
2 credit agreement, that just designates the pages for AES  
3 in their loan origination file. So the other 17 pages  
4 would be other documents within that origination file.

5                   **Q. And where are those 17 pages?**

6                   A. With AES.

7                   **Q. Why is this particular page singled out? Do**  
8 **you know?**

9                   A. Well, it is -- so it forms a part of the credit  
10 agreement, but it is generated and sent after the credit  
11 agreement. So the credit agreement would be sent in by  
12 the consumer, and once that loan is approved and  
13 disbursed, the note disclosure statement gets sent along  
14 with the disbursement funds to the consumer. So it is a  
15 separate document but it does form and it is  
16 incorporated into the credit agreement.

17                   MS. HEATH: Okay. Let's turn to the PDF letter  
18 F, and I will ask the court reporter to mark this as  
19 Exhibit 6.

20                   (DEPOSITION EXHIBIT 6 WAS MARKED.)

21 BY MS. HEATH:

22                   **Q. Mr. Luke, can you identify this document?**

23                   A. Yes. This is the pool supplement particular to  
24 GMAC Bank for the 2006-4 pool.

25                   **Q. And I know we discussed pool supplements in**

1                   So do we know that whoever this person is, that  
2                   that is their real signature?

3                   A. I can't be certain.

4                   Q. Okay. Let me go back to the first page. In  
5                   fact, actually, it might be easier if I do a screen  
6                   share on this one too.

7                   Okay. Now, do you see under Article 1 there is  
8                   this underlined reference to Schedule 1?

9                   A. Yes, ma'am.

10                  Q. Now, there's no Schedule 1 attached to this  
11                  document, is there?

12                  A. Not in its full form. That is correct.

13                  Q. Where is Schedule 1?

14                  A. Schedule 1 is in TSI servers, saved along with  
15                  the pool supplements.

16                  Q. And you said Schedule 1 is not here in its full  
17                  form. What do you mean by "full form"?

18                  A. So what Schedule 1 is, it is a listing of all  
19                  of the loans that were included in the pool. So it  
20                  contains hundreds if not thousands of loans along with  
21                  various pieces of sensitive data. So instead of  
22                  attaching it in its full form, which could be hundreds  
23                  of pages potentially, what is attached as the final page  
24                  of deposition Exhibit 6 is an excerpt of the Schedule 1  
25                  that is just showing the line item of

1       Mr. Lizarraga-Davis's loan.

2           Q. Okay. So let's take a look at this page. I'm  
3   curious about this phrase, "Total Net Principal."

4           Do you see that?

5           A. Yes, ma'am.

6           Q. What does that mean?

7           A. So that was the total amount of principal net  
8   of any interest that had capitalized or -- interest that  
9   had capitalized or payments to the principal that had  
10   been made between the origination and the date the loan  
11   was sold. Because this loan was opted to be an  
12   interest-only payment loan, so payments were to begin  
13   while the consumer was still in school.

14           Q. Okay. So as of what date is this principal  
15   balance referring to?

16           A. It should be as of the date of the pool  
17   supplement, which is December 7, 2006. I would have to  
18   look at the loan financial activity to verify that that  
19   amount is there.

20           Q. And what about "Total Outstanding Gross  
21   Principal"?

22           A. So the gross principal is the principal amount,  
23   and it includes the origination fee and any capitalized  
24   interest that may have occurred.

25           Q. Up until presumably December 7, 2006?

1 DECLARATION OF WITNESS  
23 I hereby declare I am the deponent in the  
4 within matter; that I have read the foregoing  
5 deposition and know the contents thereof, and I  
6 declare that the same is true of my knowledge except  
7 as to the matters which are therein stated upon my  
8 information or belief, and as to those matters, I  
9 believe them to be true.10 I declare under the penalties of perjury of  
11 the State of California that the foregoing is true and  
12 correct.

13

14 Executed this \_\_\_\_\_ day of \_\_\_\_\_,  
15 202\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
16 (City) (State)

17

18 \_\_\_\_\_  
19

BRADLEY LUKE

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## 1                   ::: CERTIFICATE OF REPORTER :::

2                   I, SARAH J. MACDEVITT, a Certified Shorthand  
3                   Reporter, holding a valid and current license issued  
4                   by the State of California, CSR No. 14175, duly  
                 authorized to administer oaths, do hereby certify:5                   That the witness in the foregoing deposition  
6                   was administered an oath to testify to the whole truth  
7                   in the within-entitled cause.8                   That said deposition was taken down by me in  
9                   shorthand at the time and place therein stated and  
10                  thereafter transcribed into typewriting, by computer,  
11                  under my direction and supervision.

12                  (X) Reading and signing was requested/offered.

13                  ( ) Reading and signing was waived.

14                  ( ) Reading and signing was not requested/offered.

15

16                  I further certify that I am neither counsel  
17                  for nor related to any party in the foregoing  
18                  deposition and caption named nor in any way interested  
19                  in the outcome thereof.

20

21                  DATED: April 12, 2021

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20                  SARAH J. MACDEVITT, RPR, CSR  
21                  California Certified Shorthand Reporter 14175  
22                  Registered Professional Reporter

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